

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z -976795-D1  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: Eric JOHNSON

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1850

Eric JOHNSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 7 July 1970, an Examiner of the United States Coast Guard at New York, N.Y., suspended Appellant's seaman's documents for four months plus four months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an able seaman on board SS SANTA PAULA under authority of the document above described, on or about 15 November 1968, Appellant wrongfully threw a knife in the direction of the chief cook while the vessel was at sea, and on 16 December 1968 wrongfully failed to perform duties when the vessel was at sea.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of SANTA PAULA and the testimony of two witnesses.

In defense, Appellant offered no evidence.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of four months plus four months on twelve months' probation.

The entire decision was served on 13 July 1970. Appeal was timely filed on 12 August 1970. Although Appellant had until 17 January 1971 to perfect his appeal, he has added nothing to the statement in his original notice of appeal.

FINDINGS OF FACT

On 15 and 16 December 1968, Appellant was serving as an able seaman on board SS SANTA PAULA and acting under authority of his document while the ship was at sea.

At about 1730 on 15 December 1968, Appellant appeared at a door at one end of the crew galley of SANTA PAULA and demanded some meat. He was told by the second cook that he should go to the crew's mess and order from the messman. Appellant moved to the door at the other end of the galley.

There he took a clasp knife out of his pocket, opened it, and threw it with an overhand motion between two of the cooks. The second cook was the only one of three cooks present who saw the activity with the knife. He called out an alarm to the others in the galley. The knife hit the deck nearer to the second cook, although both the second cook and the chief cook were in the line of the throw.

After complaint, the ship's union chairman arrived on the scene, picked up the knife, and sent Appellant to his quarters.

On 16 December 1968, Appellant, without authority, did not stand his 0000-0400 watch.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the decision is contrary to the weight of the evidence, and that the order is too severe.

APPEARANCE: Abraham E. Freedman, New York, N.Y., by Martin L. Katz, Esq.

#### OPINION

##### I

The findings of the Examiner are based on the testimony of eyewitnesses. There was no evidence produced or adduced on behalf of Appellant. It is difficult to see how "weight" of the evidence can be questioned when all is on one scale with none on the other.

To hold the Examiner's findings unsupportable I would have to find that they were not based on substantial evidence of a reliable and probative nature. So to hold, I would have to find that the evidence upon which the Examiner relied was so inherently incompetent that no reasonable person could have been persuaded by it. I cannot so find and I do not so hold. The evidence upon which the Examiner relied was sufficient under the laws governing

administrative procedure.

II

Appellant complains that the Examiner's order is too severe. Three fourths of the Examiner's order of outright suspension here is based upon Appellant's violation of a previously ordered period of probation. The order, if anything, is lenient.

ORDER

The order of the Examiner dated at New York, N.Y., on 7 July 1970, is AFFIRMED.

C. R. BENDER  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 9th day of September 1971.

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